

(C) Key recovery agents must implement the security policies and key escrow/key recovery procedures identified in Supplement No. 5 to part 742 of the EAR;

(D) Key recovery agents must comply with all applicable EAR Record keeping requirements, including record retention requirements; and

(E) Key recovery agents must carry out the key holding obligations as approved by BXA, and any violation of any of the key holding obligations shall also constitute a violation of the EAR. Note that the key recovery agent's continuing compliance with key recovery agent requirements and key safeguard procedures is a condition for use of License Exception KMI. The exporter or reexporter, whether that person is the key recovery agent or not, must submit a new classification request to BXA if there are any changes (e.g., termination, replacement, additions) to the previously approved key recovery agent.

(ii) *Other recoverable encryption items.* Requests for one-time review of recoverable products which allow government officials to obtain, under proper legal authority and without the cooperation or knowledge of the user, the plaintext of the encrypted data and communications will receive favorable consideration.

(2) *Non-recoverable encryption items.* Upon approval of your classification request submitted in accordance with this paragraph (d)(2), you will become eligible to use License Exception KMI for six months. In order to continue using this License Exception, you must renew your eligibility by submitting the progress report described in paragraph (d)(2)(ii) of this section. Classification requests for 56-bit DES or equivalent strength non-key recovery software and equipment must meet the following criteria:

(i) Initial request must be submitted with a business plan that explains in detail the steps the applicant will take during the two-year transition period according to the criteria identified in Supplement No. 7 to part 742 of the EAR;

(ii) Renewal for use of this License Exception is contingent upon progress reports sent to BXA every six months

and the applicant's adherence to benchmarks and milestones as set forth in the plan submitted for the initial classification request.

(iii) Applicants may inform their authorized distributors that an approved classification and plan has been granted to them and the distributors' authority to so export or reexport will be for a time period ending on the same day the applicant's authority to export or reexport ends.

(e) *Reporting requirements.* (1) You must provide semiannual reports to BXA identifying:

(i) Ultimate consignee; specific end-user name and address, if available; and country of ultimate destination; and

(ii) Quantities of each encryption item shipped.

(2) You must submit reports no later than March 1 and no later than September 1 of any given year.

[61 FR 68579, Dec. 30, 1996]

#### **§ 740.9 Temporary imports, exports, and reexports (TMP).**

This License Exception authorizes various temporary exports and reexports; exports and reexports of items temporarily in the United States; and exports and reexports of beta test software.

(a) *Temporary exports and reexports—*

(1) *Scope.* You may export and reexport commodities and software for temporary use abroad (including use in international waters) subject to the conditions and exclusions described in paragraph (a)(4) of this section. Commodities and software shipped as temporary exports or reexports under the provisions of this paragraph (a) must be returned to the country from which they were exported as soon as practicable but, except in circumstances described in this section, no later than one year from the date of export. This requirement does not apply if the commodities and software are consumed or destroyed in the normal course of authorized temporary use abroad or an extension or other disposition is permitted by the EAR or in writing by BXA.

(2) *Eligible commodities and software.* The following commodities and software are eligible to be shipped under this paragraph (a):

(i) *Tools of trade.* Usual and reasonable kinds and quantities of commodities and software for use by employees of the exporter in a lawful enterprise or undertaking of the exporter. Eligible commodities and software may include, but are not limited to, such equipment as is necessary to commission or service goods, provided that the equipment is appropriate for this purpose and that all goods to be commissioned or serviced are of foreign origin, or if subject to the EAR, have been legally exported or reexported. The commodities and software must remain under the effective control of the exporter or the exporter's employee. The shipment of commodities and software may accompany the individual departing from the United States or may be shipped unaccompanied within one month before the individual's departure from the United States, or at any time after departure. No tools of the trade may be taken to Country Group E:2, and only equipment necessary to commission or service goods may be taken as tools of trade to Country Group D:1. (See Supplement No. 1 to part 740.)

(ii) *Kits consisting of replacement parts.* Kits consisting of replacement parts may be exported or reexported to all destinations, except Country Group E:2 (see Supplement No. 1 to part 740), provided that:

(A) The parts would qualify for shipment under paragraph (a)(2)(ii)(C) of this section if exported as one-for-one replacements;

(B) The kits remain under effective control of the exporter or an employee of the exporter; and

(C) All parts in the kit are returned, except that one-for-one replacements may be made in accordance with the requirements of License Exception RPL and the defective parts returned (see "parts", § 740.9(a) of this part).

(iii) *Exhibition and demonstration in Country Group B.* Commodities and software for exhibition or demonstration in Country Group B (see Supplement No. 1 to part 740) may be exported or reexported under this provision pro-

vided that the exporter maintains ownership of the commodities and software while they are abroad and provided that the exporter, an employee of the exporter, or the exporter's designated sales representative retains effective control over the commodities and software while they are abroad. The commodities and software may not be used for their intended purpose while abroad, except to the minimum extent required for effective demonstration. The commodities and software may not be exhibited or demonstrated at any one site more than 120 days after installation and debugging, unless authorized by BXA. However, before or after an exhibition or demonstration, pending movement to another site, return to the United States or the foreign reexporter, or BXA approval for other disposition, the commodities and software may be placed in a bonded warehouse or a storage facility provided that the exporter retains effective control over their disposition. The export documentation for this type of transaction must show the U.S. exporter as ultimate consignee, in care of the person who will have control over the commodities and software abroad.

(iv) *Inspection and calibration.* Commodities to be inspected, tested, calibrated or repaired abroad.

(v) *Containers.* Containers for which another License Exception is not available and that are necessary for export of commodities. However, this "containers" provision does not authorize the export of the container's contents, which, if not exempt from licensing, must be separately authorized for export under either a License Exception or a license.

(vi) *Broadcast material.* (A) Video tape containing program material recorded in the country of export to be publicly broadcast in another country.

(B) Blank video tape (raw stock) for use in recording program material abroad.

(vii) *Assembly in Mexico.* Commodities to be exported to Mexico under Customs entries that require return to the United States after processing, assembly, or incorporation into end products by companies, factories, or facilities participating in Mexico's in-bond industrialization program (Maquiladora),

provided that all resulting end-products (or the commodities themselves) are returned to the United States.

(viii) *News media.* (A) Commodities necessary for news-gathering purposes (and software necessary to use such commodities) may accompany “accredited” news media personnel (i.e., persons with credentials from a news gathering or reporting firm) to Country Groups D:1 or E:2 (see Supplement No. 1 to part 740) if the commodities:

(1) Are retained under “effective control” of the exporting news gathering firm;

(2) Remain in the physical possession of the news media personnel. The term physical possession for purposes of this paragraph (a)(2)(viii), news media, is defined as maintaining effective measures to prevent unauthorized access (e.g., securing equipment in locked facilities or hiring security guards to protect the equipment); and

(3) Are removed with the news media personnel at the end of the trip.

(B) When exporting under this paragraph (a)(2)(viii) from the United States, the exporter must send a copy of the packing list or similar identification of the exported commodities, to: U.S. Department of Commerce, Bureau of Export Administration, Office of Enforcement Support, Room H4069, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, or any of its field offices, specifying the destination and estimated dates of departure and return. The Office of Export Enforcement (OEE) may spot check returns to assure that the temporary exports and reexports provisions of this License Exception are being used properly.

(C) Commodities or software necessary for news-gathering purposes that accompany news media personnel to all other destinations shall be exported or reexported under paragraph (a)(2)(i), tools of trade, of this section if owned by the news gathering firm, or if they are personal property of the individual news media personnel. Note that paragraphs (a)(2)(i), tools of trade and (a)(2)(viii), news media, of this section do not preclude independent “accredited” contract personnel, who are under control of news gathering firms while on assignment, from utilizing

these provisions, provided that the news gathering firm designate an employee of the contract firm to be responsible for the equipment.)

(3) *Special restrictions*—(i) *Destinations.* (A) No commodity or software may be exported to Country Group E:2 (see Supplement No. 1 to part 740) except as permitted by paragraph (a)(2)(viii), news media, of this section;

(B) No commodity or software may be exported to Country Group D:1 (see Supplement No. 1 to part 740) except:

(1) Commodities and software exported under paragraph (a)(2)(viii), news media, of this section;

(2) Commodities and software exported under paragraph (a)(2)(i), tools of trade, of this section; and

(3) Commodities exported as kits of replacement parts, consistent with the requirements of paragraph (a)(2)(ii) of this section.

(C) These destination restrictions apply to temporary exports to and for use on any vessel, aircraft or territory under ownership, control, lease, or charter by any country in Country Group D:1 or E:2, or any national thereof. (See Supplement No. 1 to part 740.)

(ii) *Ineligible commodities or software.* Commodities or software that will be used outside of Country Group A:1 (see Supplement No. 1 to part 740), Iceland, or New Zealand, either directly or indirectly in any sensitive nuclear activity as described in §744.2 of the EAR may not be exported or reexported to any destination under the temporary exports and reexports provisions of this License Exception.

(iii) *Use or disposition.* No commodity or software may be exported or reexported under this paragraph (a) if:

(A) An order to acquire the commodity or software has been received before shipment;

(B) The exporter has prior knowledge that the commodity or software will stay abroad beyond the terms described in this paragraph (a); or

(C) The commodity or software is for lease or rental abroad.

(4) *Return or disposal of commodities and software.* All commodities and software exported or reexported under these provisions must, if not consumed or destroyed in the normal course of authorized temporary use abroad, be

returned as soon as practicable but no later than one year after the date of export, to the United States or other country from which the commodities and software were so exported, or shall be disposed of or retained in one of the following ways:

(i) *Permanent export or reexport.* If the exporter or the reexporter wishes to sell or otherwise dispose of the commodities or software abroad, except as permitted by this or other applicable License Exception, the exporter must request authorization by submitting a license application to BXA at the address listed in part 748 of the EAR. (See part 748 of the EAR for more information on license applications.) The request should comply with all applicable provisions of the EAR covering export directly from the United States to the proposed destination. The request must also be supported by any documents that would be required in support of an application for export license for shipment of the same commodities or software directly from the United States to the proposed destination. BXA will advise the exporter of its decision.

(ii) *Use of a license.* An outstanding license may also be used to dispose of commodities or software covered by the provisions of this paragraph (a), provided that the outstanding license authorizes direct shipment of the same commodity or software to the same new ultimate consignee in the new country of destination.

(iii) *Authorization to retain abroad beyond one year.* If the exporter wishes to retain a commodity or software abroad beyond the 12 months authorized by paragraph (a) of this section, the exporter must request authorization by submitting Form BXA-748P, Multipurpose Application, 90 days prior to the expiration of the 12 month period. The request must be sent to BXA at the address listed in part 748 of the EAR and should include the name and address of the exporter, the date the commodities or software were exported, a brief product description, and the justification for the extension. If BXA approves the extension request, the exporter will receive authorization for a one-time extension not to exceed six months. BXA normally will not allow an extension

for commodities or software that have been abroad more than 12 months, nor will a second six month extension be authorized. Any request for retaining the commodities or software abroad for a period exceeding 18 months must be made in accordance with the requirements of paragraph (a)(4)(i) of this section.

(5) *Reexports.* Commodities and software legally exported from the United States may be reexported to a new country(ies) of destination under this paragraph (a) provided its terms and conditions are met and the commodities and software are returned to the country from which the reexport occurred.

(b) *Exports of items temporarily in the United States: Scope.* The provisions of this paragraph (b) describe the conditions for exporting foreign-origin items temporarily in the United States. The provisions include the export of items moving in transit through the United States, imported for display at a U.S. exhibition or trade fair, returned because unwanted, or returned because refused entry.

NOTE 1 TO PARAGRAPH (B) OF THIS SECTION: A commodity withdrawn from a bonded warehouse in the United States under a "withdrawal for export" customs entry is considered as "moving in transit". It is not considered as "moving in transit" if it is withdrawn from a bonded warehouse under any other type of customs entry or if its transit has been broken for a processing operation, regardless of the type of customs entry.

NOTE 2 TO PARAGRAPH (B) OF THIS SECTION: Items shipped on board a vessel or aircraft and passing through the United States from one foreign country to another may be exported without a license provided that (a) while passing in transit through the United States, they have not been unladen from the vessel or aircraft on which they entered, and (b) they are not originally manifested to the United States.)

(1) *Items moving in transit through the United States.* Subject to the following conditions, the provisions of paragraph (b)(1) of this section authorize export of items moving in transit through the United States under a Transportation and Exportation (T. & E.) customs entry or an Immediate Exportation (I.E.) customs entry made at a U.S. Customs Office.

(i) Items controlled for national security, nuclear proliferation, missile technology, or chemical and biological weapons reasons may not be exported to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740), respectively, under this paragraph (b)(1).

(ii) Items may not be exported to Country Group E:2 under this paragraph (b)(1).

(iii) The following may not be exported in transit from the United States under § 740.8(b)(1):

(A) Commodities shipped to the United States under an International Import Certificate, Form BXA-645P;

(B) Chemicals controlled under ECCN 1C350; or

(C) Horses for export by sea (refer to short supply controls in part 754 of the EAR).

(iv) The provisions of paragraph (b)(1) apply to all shipments from Canada moving in transit through the United States to any foreign destination, regardless of the nature of the commodities or software or their origin. For such shipments the customs office at the U.S. port of export will require a copy of Form B-13, Canadian Customs Entry, certified or stamped by Canadian customs authorities, except where the shipment is valued at less than \$50.00. (In transit shipments originating in Canada that are exempt from U.S. licensing, or made under a U.S. license or other applicable U.S. License Exception do not require this form.) The commodity or software description, quantity, ultimate consignee, country of ultimate destination, and all other pertinent details of the shipment must be the same on a required Form B-13, as on Commerce Form 7513, or when Form 7513 is not required, must be the same as on Customs Form 7512. When there is a material difference, a corrected Form B-13 authorizing the shipment is required.

(2) *Items imported for display at U.S. exhibitions or trade fairs.* Subject to the following conditions, the provisions of this paragraph (b)(2) authorize the export of items that were imported into the United States for display at an exhibition or trade fair and were either entered under bond or permitted temporary free import under bond providing for their export and are being ex-

ported in accordance with the terms of that bond.

(i) Items may be exported to the country from which imported into the United States. However, items originally imported from Cuba or North Korea may not be exported unless the U.S. Government had licensed the import from that country.

(ii) Items may be exported to any destination other than the country from which imported except:

(A) Items imported into the United States under an International Import Certificate;

(B) Exports to Country Group E:2 (see Supplement No. 1 to part 740); or

(C) Exports to Country Group D:1, 2, 3, or 4 (see Supplement No. 1 to part 740) of items controlled for national security, missile technology, chemical and biological weapons reasons, or nuclear proliferation, respectively.

(3) *Return of unwanted shipments.* A foreign-origin item may be returned to the country from which it was imported if its characteristics and capabilities have not been enhanced while in the United States. No foreign-origin items may be returned to Cuba, Libya, or North Korea.

(4) *Return of shipments refused entry.* Shipments of items refused entry by the U.S. Customs Service, the Food and Drug Administration, or other U.S. Government agency may be returned to the country of origin, except to:

(i) A destination in Cuba, Libya, or North Korea; or

(ii) A destination from which the shipment has been refused entry because of the Foreign Assets Control Regulations of the Treasury Department, unless such return is licensed or otherwise authorized by the Treasury Department, Office of Foreign Assets Control (31 CFR part 500).

(c) *Exports of beta test software—(1) Scope.* The provisions of paragraph (c) authorize exports and reexports to eligible countries of beta test software intended for distribution to the general public.

(2) *Eligible countries.* The countries that are eligible to receive exports and reexports are all countries except those in Country Group E:2.

(3) *Exports of beta test software.* All software that is controlled by the Commerce Control List (Supplement No. 1 to part 774 of the EAR), and under Commerce licensing jurisdiction, is eligible for export and reexport, subject to the restrictions of this paragraph, except encryption software controlled for EI reasons under ECCN 5D002. Certain encryption software may become eligible after a one-time BXA review (refer to § 742.15(b)(1) of the EAR).

(4) *Conditions for use.* Any beta test software program may be exported or reexported to eligible countries if all of the conditions under this section are met:

(i) The software producer intends to market the software to the general public after completion of the beta testing, as described in the General Software Note found in Supplement No. 2 to part 774 of the EAR;

(ii) The software producer provides the software to the testing consignee free-of-charge or at a price that does not exceed the cost of reproduction and distribution; and

(iii) The software is designed for installation by the end-user without further substantial support from the supplier.

(5) *Importer Statement.* Prior to shipping any eligible software, the exporter or reexporter must obtain the following statement from the testing consignee, which may be included in a contract, non-disclosure agreement, or other document that identifies the importer, the software to be exported, the country of destination, and the testing consignee.

We certify that this beta test software will only be used for beta testing purposes, and will not be rented, leased, sold, sublicensed, assigned, or otherwise transferred. Further, we certify that we will not transfer or export any product, process, or service that is the direct product of the beta test software.

(6) *Use limitations.* Only testing consignees that provide the importer statement required by paragraph (c)(5) of this section may execute any software received.

(7) *Return or disposal of software.* All beta test software exported must be destroyed abroad or returned to the exporter within 30 days of the end of the beta test period as defined by the soft-

ware producer or, if the software producer does not define a test period, within 30 days of completion of the consignee's role in the test. Among other methods, this requirement may be satisfied by a software module that will destroy the software and all its copies at or before the end of the beta test period.

[61 FR 64277, Dec. 4, 1996. Redesignated at 61 FR 68579, Dec. 30, 1996, as amended at 61 FR 68580, Dec. 30, 1996]

#### **§ 740.10 Servicing and replacement of parts and equipment (RPL).**

This License Exception authorizes exports and reexports associated with one-for-one replacement of parts or servicing and replacement of equipment.

(a) *Parts—(1) Scope.* The provisions of this paragraph (a) authorize the export and reexport of one-for-one replacement parts for previously exported equipment.

(2) *One-for-one replacement of parts.* (i) The term *replacement parts* as used in this section means parts needed for the immediate repair of equipment, including replacement of defective or worn parts. (It includes subassemblies but does not include test instruments or operating supplies). (The term *subassembly* means a number of components assembled to perform a specific function or functions within a commodity. One example would be printed circuit boards with components mounted thereon. This definition does not include major subsystems such as those composed of a number of subassemblies.) Items that improve or change the basic design characteristics, e.g., as to accuracy, capability, performance or productivity, of the equipment upon which they are installed, are not deemed to be replacement parts. For kits consisting of replacement parts, consult § 740.8(a)(2)(ii) of this part.

(ii) Parts may be exported only to replace, on a one-for-one basis, parts contained in commodities that were: legally exported from the United States; legally reexported; or made in a foreign country incorporating authorized U.S.-origin parts. The conditions of the original U.S. authorization must not have been violated. Accordingly, the export of replacement parts may be